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No. 04-794

Supreme Court, U.S.
FILED
JAN 12 2005
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

STATE OF CONNECTICUT,

Petitioner,

v.

ANTHEM BLUE CROSS AND BLUE SHIELD OF CONNECTICUT, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF IN OPPOSITION

MICHAEL G. DURHAM
PATRICK M. NOONAN
DELANEY ZEMETIS
DONAHUE DURHAM
& NOONAN
741 Boston Post Road
Guilford, CT 06437
(203) 458-9168

*Counsel of Record

* CRAIG A. HOOVER
CATHERINE E. STETSON
MICHELLE D. MORRIS
HOGAN & HARTSON LLP
555 13th Street, N.W.
Washington, DC 20004
(202) 637-5600

Counsel for Respondents Anthem Blue Cross and Blue Shield of Connecticut and Anthem Health Plans, Inc.

(additional counsel on inside cover)

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

Additional counsel for respondents:

JOHN G. HARKINS, JR.
ELEANOR MORRIS ILLOWAY
HARKINS CUNNINGHAM LLP
2800 One Commerce Sq.
Philadelphia, PA 19103
(215) 851-6700

DAVID A. BONO
HARKINS CUNNINGHAM LLP
801 Pennsylvania Ave, N.W.
Suite 600
Washington, DC 20004
(202) 973-7600

Counsel for Respondent CIGNA HealthCare of Connecticut, Inc.

R. RYAN STOLL
SKADDEN ARPS SLATE MEAGHER & FLOM, LLP
333 West Wacker Drive
Chicago, IL 60606
(312) 407-0700

WILLIAM A. HELVESTINE
MICHAEL T. HORAN
EPSTEIN BECKER & GREEN, PC
One California Street
26th Floor
San Francisco, CA 94111
(415) 398-3500

DALY D. E. TEMCHINE
EPSTEIN BECKER & GREEN, PC
1227 25th Street, N.W.
Washington, D.C. 20037
(202) 861-0900

Counsel for Respondents Health Net, Inc., and Health Net of Connecticut, Inc.

JONATHAN P. RICH
ATHENA R. TSAKANIKAS
OXFORD HEALTH PLANS, INC.
48 Monroe Turnpike
Trumbull, CT 06611
(203) 459-6488

ROBERT J. GIUFFRA, JR.
SUHANA S. HAN
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004
(212) 558-4000

Counsel for Respondents Oxford Health Plans of Connecticut, Inc. and Oxford Health Plans, Inc.

QUESTION PRESENTED

In 2002, petitioner the State of Connecticut sought a writ of certiorari to the Second Circuit in a case presenting two issues: [1] whether the State had standing to sue under ERISA as an "assignee" of some of its citizens' ERISA rights; and [2] whether the State had standing to sue to enforce ERISA in its *parens patriae* capacity. This Court denied certiorari.

In 2004, the Eleventh Circuit decided an appeal involving the same petitioner and the same two issues, expressly adopting and relying upon the Second Circuit's reasoning.

The question presented is whether this Court—having previously denied certiorari on the same issues and with nothing having changed in the interim—should grant certiorari to review the Eleventh Circuit's decision.

RULE 29.6 STATEMENT

The legal name of respondent Anthem Blue Cross and Blue Shield of Connecticut is Anthem Health Plans, Inc. Respondent Anthem Health Plans, Inc. is a wholly owned subsidiary of Anthem East, Inc., which is a wholly owned subsidiary of Anthem Insurance Companies, Inc., which is a wholly owned subsidiary of WellPoint, Inc. No publicly held company owns 10% or more of respondent Anthem Health Plans, Inc.'s stock.

Respondent CIGNA HealthCare of Connecticut, Inc. is a direct, wholly owned subsidiary of Healthsource, Inc., which is a direct, wholly owned subsidiary of CIGNA Health Corporation, which is a direct, wholly owned subsidiary of Connecticut General Corporation, which is a direct, wholly owned subsidiary of CIGNA Holdings, Inc., which is a direct, wholly owned subsidiary of CIGNA Corporation. The shares of stock of CIGNA HealthCare of Connecticut, Inc. are not publicly held, and no publicly held company owns 10% or more of CIGNA Corporation's common stock.

Respondent Health Net, Inc., formerly known as Foundation Health Systems, Inc., is a publicly held corporation. It has no parent corporation. The one publicly held company owning 10% or more of the outstanding shares of Health Net, Inc.'s common stock is Legg Mason Funds Management, Inc. and related entities. Respondent Health Net of Connecticut, Inc. is a wholly owned subsidiary of Health Net of the Northeast, Inc., which in turn is a wholly owned subsidi-

ary of respondent Health Net, Inc. No publicly held company owns 10% or more of Health Net of Connecticut, Inc.'s common stock.

Respondent Oxford Health Plans of Connecticut, Inc. is a wholly owned subsidiary of respondent Oxford Health Plans, Inc. (now Oxford Health Plans LLC), which in turn is a wholly owned subsidiary of UnitedHealth Group, Inc. Oxford Health Plans of Connecticut, Inc.'s shares of stock are not publicly held, Oxford Health Plans LLC does not have any shares of stock, and no publicly held company owns 10% or more of UnitedHealth Group, Inc.'s common stock.

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BRIEF IN OPPOSITION

Respondents respectfully request that the Court deny the petition for a writ of certiorari seeking review of the decision of the United States Court of Appeals for the Eleventh Circuit in this case.

INTRODUCTION

This is the State of Connecticut's second petition for certiorari on *identical* issues—in fact, the State's petition is largely a verbatim copy of its first unsuccessful petition for review. In the prior case, the Connecticut federal district court dismissed the State's ERISA claims for lack of standing. The Second Circuit affirmed, the State sought certiorari, and this Court denied review. In this case—originally filed in

Connecticut federal district court but transferred to Florida—the district court dismissed Connecticut's ERISA claims for lack of standing. The Eleventh Circuit affirmed in an opinion that expressly adopted the Second Circuit's reasoning.

The State again seeks certiorari, this time from the Eleventh Circuit's decision. There is almost literally no difference between this petition and the one seeking review of the Second Circuit's earlier decision, and nothing has changed in the interim. This petition should likewise be denied.

COUNTERSTATEMENT

Eight judges from four federal courts in two circuits have held that the State of Connecticut lacks standing to sue under ERISA Section 502(a)(3) either as a putative assignee or in *parens patriae*. Because the Eleventh Circuit expressly adopted and relied upon the earlier decision of the Second Circuit, the factual and procedural background of both cases warrants detailed treatment.

The First Case. In December 1999, the Attorney General of Connecticut sued respondent Health Net of Connecticut, Inc.—then doing business as Physicians Health Services of Connecticut, Inc. ("PHS")—in the United States District Court for the District of Connecticut, claiming that Health Net had violated ERISA, 29 U.S.C. § 1001 *et seq*. The State alleged that it had standing to sue under ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), as an "assignee" of a few Connecticut residents, as well as in its *parens patriae* capacity. Concluding that the State lacked standing to sue to enforce ERISA under either theory, the district court dismissed the Attorney General's suit. *Connecticut* v. *Physicians Health Servs. of Conn., Inc.*, 103 F. Supp. 2d 495, 497 (D. Conn. 2000).

The Second Circuit affirmed. *Connecticut* v. *Physicians Health Servs. of Conn., Inc.*, 287 F.3d 110 (2d Cir.), *cert. denied*, 537 U.S. 878 (2002) ("*PHS*"). As the Second Circuit

explained, the State purported to be the assignee of plan beneficiaries' claims for equitable relief. But that relief—as Connecticut's Attorney General readily conceded—would not "flow to the State as assignee," but instead would flow only to plan beneficiaries. *Id.* at 118. The State therefore lacked any " 'concrete private interest in the outcome of [the] suit,' " having suffered no injury sufficient to confer Article III standing. *Id.* at 118 (*quoting Vermont Agency of Natural Res.* v. *United States ex rel. Stevens*, 529 U.S. 765, 772 (2000)).

The Second Circuit also rejected the State's claim that it had standing to sue to enforce ERISA in its capacity as *parens patriae*. *PHS*, 287 F.3d at 119-122. The court explained that a state's *parens patriae* standing to sue for violations of a federal statute depends on whether "Congress intended to allow for such standing." *Id.* at 120 (citing *Hawaii* v. *Standard Oil Co.*, 405 U.S. 251, 260-266 (1972)). ERISA confers authority on states to sue in a limited set of circumstances; for example, Section 503(a)(7) specifies that a state may act as a plaintiff to "enforce qualified medical child-support orders." *PHS*, 287 F.3d at 121 (citing 29 U.S.C. § 1132(a)(7)). But Section 502(a)(3)—the operative section in *PHS* and in this case—limits those plaintiffs who may bring civil actions for equitable or injunctive relief to plan "participant[s], beneficiar[ies], or fiduciar[ies]." 29 U.S.C. § 1132(a)(3); *see PHS*, 287 F.3d at 121. The State in its *parens patriae* capacity is none of these. Because Section 502(a)(3) "carefully limits the parties who may seek relief" and makes no provision for a state to sue in *parens patriae*, the Second Circuit concluded that Connecticut could not sue in *parens patriae* to enforce ERISA. *PHS*, 287 F.3d at 121.

The Attorney General subsequently petitioned this Court for a writ of certiorari. Petition for Writ of Certiorari, *Connecticut* v. *Physicians Health Services of Connecticut*, *cert. denied* 537 U.S. 878 (2002) (No. 02-02) ("2002 Pet.").

The Questions Presented in that petition were identical to the Questions Presented in this one:

> 1. Whether the ability of a State to litigate as *parens patriae* in matters of grave importance to the health and welfare of State citizens is an aspect of State sovereignty protected by the United States Constitution such that a clear statement of congressional intent must be found before *parens patriae* standing may be foreclosed.
>
> 2. Whether the State of Connecticut, in seeking to proceed as the assignee of ERISA enrollees and requesting relief protecting State citizens from the loss of essential medical care, has alleged an injury sufficient to confer standing pursuant to Article III of the United States Constitution.

2002 Pet. i; *compare* 2004 Pet. i (same questions in reverse order). This Court denied the petition on October 7, 2002. 537 U.S. 878 (2002).

The Second Case. While Connecticut's appeal was still pending in the Second Circuit, the State obtained four additional ERISA "assignments" and filed a second lawsuit in Connecticut federal district court, claiming—as before—standing as an assignee of the four enrollees' ERISA rights and in the State's capacity as *parens patriae*. The suit named the same defendant—PHS—along with Anthem Blue Cross and Blue Shield of Connecticut, Anthem Health Plans, Inc., and five additional defendants (the "*Anthem*" litigation). The district court stayed all proceedings in *Anthem* pending the Second Circuit's resolution of the *PHS* appeal, on grounds that *PHS* involved identical issues. But while the *PHS* appeal was still pending—and over the State of Connecticut's opposition—the Judicial Panel on Multidistrict Litigation transferred *Anthem* to the United States District Court for the

Southern District of Florida for coordinated pre-trial management in the pending multi-district litigation captioned *In re Managed Care Litigation*, No. 00-1334-MD (S.D. Fla. filed April 17, 2000).

Following the Second Circuit's decision and this Court's denial of certiorari in *PHS*, the *Anthem* defendants moved to dismiss the lawsuit for lack of standing. The Florida district court granted the motion. Connecticut appealed to the Eleventh Circuit.

The Eleventh Circuit affirmed. Noting that the State had "asserted the same bases for standing in th[e *PHS*] lawsuit as in the present one," the court of appeals "concur[red] with the reasoning of the Second Circuit in *Connecticut* v. *Physicians Health Services of Connecticut*" and "adopt[ed] its reasoning" as its own. Pet. App. 3, 4.

Connecticut has now filed a petition for writ of certiorari asserting the same questions and making the same arguments as in the earlier petition with respect to the Second Circuit case. In fact, the "reasons for granting the writ" sections of both petitions are very nearly identical. *Compare* 2002 Pet. 9-14 with 2004 Pet. 5-10; *also compare* 2002 Pet. 6-9 with 2004 Pet. 10-14.

Nothing has changed since the last petition. No court has decided an "important question of federal law" in a way that "conflicts with relevant decisions of this Court" or of the courts of appeal. S. Ct. Rule 10. To the contrary, each of the four federal courts to have addressed petitioner's claims has faithfully applied this Court's precedents to the facts. *See id.* ("A petition for writ of certiorari is rarely granted when the asserted error consists of * * * the misapplication of a properly stated rule of law."). Neither the Eleventh nor the Second Circuit's decisions precipitated a conflict with this Court's case law or that of any other court. The petition, like Connecticut's first, should be denied.

REASONS FOR DENYING THE WRIT

The primary reason to deny the writ is that this Court has already declined to hear petitioner's claims, and petitioner has offered no reason why this Court should reach a different conclusion this time around. The Court correctly denied the earlier petition and should deny this one because the Second and Eleventh Circuits properly applied two settled principles of law. First, when a putative assignment confers on the assignee no rights or benefits giving rise to a cognizable "injury," the assignee lacks standing to sue. Second, Congress explicitly defined the parties who may bring an action under ERISA § 502(a)(3), and that list does not include a state suing in its *parens patriae* capacity.

I. THERE IS NO CONFLICT IN THE LAW OF ASSIGNEE STANDING.

No federal action can proceed if the plaintiff lacks constitutional standing, which requires, among other things, that the plaintiff "have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized; and (b) actual or imminent, not conjectural or hypothetical." *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (quotations and citations omitted). Because the purported assignments did not confer any "injury in fact," settled law required dismissal of all claims brought in the Attorney General's capacity as an assignee.

1. The Eleventh Circuit, like the Second Circuit, straightforwardly applied established law and found that Connecticut's Attorney General could not sue to enforce ERISA as an assignee of plan enrollees' interests, because—as the Attorney General candidly admitted—no benefit would flow to the State as assignee by virtue of the suit, but only to plan beneficiaries.

Under certain circumstances, an injured person may assign the right to sue to another. But in order to possess Article III standing to "assert the injury in fact suffered by the as-

signor," *Vermont Agency of Natural Res.*, 529 U.S. at 773, the assignee must itself have "a 'concrete private interest in the outcome of [the] suit.' " *Id.* at 772 (quoting *Lujan*, 504 U.S. at 573). That is, the assignee must either suffer an injury itself, or it must stand to receive the benefits produced by the relief demanded in the lawsuit. The State possesses neither here.

Connecticut cites a number of cases addressing "assignee standing" under ERISA to support its contention that it possesses Article III standing to sue as an assignee of plan beneficiaries' claims for equitable relief. 2004 Pet. 7 n.3; *see* 2002 Pet. 11 n.2 (same footnote). Each of the cases the State cites, however, involved an assignee who had suffered injury itself and thus stood to receive the benefit from a successful ERISA action—usually a medical provider seeking payment for services rendered.

In sharp contrast, the State here seeks to benefit *only* the assignors. *See* 2004 Pet. 7-10 (conceding that the State itself suffered no injury in fact). The State therefore does not have a sufficient interest in the claims it asserts to satisfy Article III's standing requirements. *See* Pet. App. 5 ("Connecticut, in its capacity as assignee, has failed to allege an actual or imminent invasion of a legally protected interest that is 'concrete and particularized.' ") (citation omitted); *PHS*, 287 F.3d at 119 (holding that "the State as purported assignee of the right to seek equitable relief for the assignors' alleged injury lacks Article III standing because it does not, through that assignment, possess the requisite interest that is or is threatened to be injured by PHS's conduct").

2. Both the Second and Eleventh Circuits correctly rejected the State's attempts to strengthen its meritless claim of assignee standing by conflating *parens patriae* principles and the law relating to assignments. *See* Pet. App. 7 n.3 (noting attempt to "bootstrap" assignee standing with *parens patriae* claim); *PHS*, 287 F.3d at 118 n.11 ("[W]hen suing in its

capacity as assignee, the State cannot rely on its *parens patriae* interest in the health and well-being of its citizens.").

Connecticut nonetheless attempts again to conflate these two distinct areas of law in its petition. 2004 Pet. 6; *see* 2002 Pet. 10 (making identical argument). The first premise of its argument is the enduring rule of *Alfred L. Snapp & Son* v. *Puerto Rico*, 458 U.S. 592, 607-608 (1982), which provides that for a state to sue in *parens patriae*, it must (among other things) "articulate an interest *apart* from the interests of particular private parties." *Id.* at 607 (emphasis added). Connecticut's second premise is that particular private parties have assigned their particular interests to the Attorney General. Therefore, Connecticut concludes, the State may sue *in parens patriae* as an *assignee*. But an ERISA plan enrollee cannot assign to the State any right to sue in *parens patriae*—no citizen possesses that right. To sue as an assignee, the State had to sue on the rights received by assignment. And as both the Second and Eleventh Circuits correctly concluded, the State lacked Article III standing to sue as an assignee. The application of such a settled principle of law to conceded facts does not merit this Court's attention.

II. THERE IS NO CONFLICT IN THE LAW OF STATUTORY STANDING UNDER ERISA.

This Court repeatedly has held that Congress in ERISA articulated with great specificity the parties permitted to bring suit to enforce its provisions. States, with narrow exceptions not implicated here, are not among them. Connecticut therefore has no right to sue in *parens patriae* under ERISA. There is no conflict in the courts over this principle.

1. This Court recently observed that ERISA's civil action provisions are "relatively straightforward." *Aetna Health Inc.* v. *Davila*, 124 S. Ct. 2488, 2496 (2004) (affirming ERISA preemption of state law causes of action). Section 502(a)(3) of ERISA states that *only* a plan participant,

beneficiary, or fiduciary may bring a civil action to enforce ERISA rights. *See Harris Trust & Sav. Bank* v. *Salomon Smith Barney, Inc.*, 530 U.S. 238, 247 (2000) (Section 502(a)(3) limits "the universe of *plaintiffs* who may bring certain civil actions") (emphasis in original); *Franchise Tax Bd.* v. *Construction Laborers Vacation Trust*, 463 U.S. 1, 27 (1983) ("ERISA carefully enumerates the parties entitled to seek relief under [Section 502(a)(3)]; it does not provide anyone other than participants, beneficiaries or fiduciaries with an express cause of action.").

The State of Connecticut is not suing to enforce its rights as a plan participant, beneficiary, or fiduciary. Both the Second and Eleventh Circuits therefore found that the State did not possess statutory standing to sue under ERISA. Pet. App. 7 ("Nothing in this statutory provision suggests that a state may bring lawsuits on behalf of its citizens to enforce ERISA. In fact, the plain language of the statute supports the conclusion that Congress had no such intention."); *PHS*, 287 F.3d at 120 ("Whether or not the State has *parens patriae* standing under Article III, we conclude that it lacks statutory standing under ERISA's § 1132(a)(3)."). The law is completely consistent on this point.

2. Connecticut contends that Congress must expressly state its intention to foreclose a state from suing in its *parens patriae* capacity to enforce a federal statute. *See* 2004 Pet. 10-13; 2002 Pet. 6-9 (making identical argument). But this Court explained in *Hawaii* v. *Standard Oil Co.*, 405 U.S. at 260-266, that a state seeking to enforce a federal statute as *parens patriae* must demonstrate that Congress clearly intended the state to be able to sue in that capacity. *See* Pet. App. 6 (citing *Standard Oil*); *PHS*, 287 F.3d at 120 (citing *Standard Oil*). Connecticut does not so much as acknowledge *Standard Oil* in either this petition or its previous one.

III. THE ATTORNEY GENERAL LACKS STATE AUTHORITY TO SUE.

Not only is federal law uniform on the issues presented in the State's petition; the Attorney General has acted outside the bounds of his authority in bringing this action at all. The Supreme Court of Connecticut has instructed that the Attorney General of Connecticut may only sue on behalf of the State when a specific statute authorizes him to do so. *Blumenthal* v. *Barnes*, 261 Conn. 434, 463, 804 A.2d 152, 170 (2002). No Connecticut statute authorizes the Attorney General to sue in *parens patriae* under ERISA. *Compare* Conn. Gen. Stat. § 3-129c (authorizing Attorney General to sue in *parens patriae* on behalf of Connecticut citizens with respect to New York City commuter tax).

* * *

In sum, Connecticut's petition presents for review a case in which there is no conflict among the lower courts; the decision below expressly adopted an earlier decision on which this Court declined to grant certiorari; and the Attorney General's own state has not authorized him to bring this suit. The petition is a singularly unattractive candidate for certiorari.

CONCLUSION

For the foregoing reasons, the petition should be denied.

Respectfully submitted,

MICHAEL G. DURHAM
PATRICK M. NOONAN
DELANEY ZEMETIS
DONAHUE DURHAM
& NOONAN
741 Boston Post Road
Guilford, CT 06437
(203) 458-9168

*Counsel of Record

* CRAIG A. HOOVER
CATHERINE E. STETSON
MICHELLE D. MORRIS
HOGAN & HARTSON LLP
555 13th Street, N.W.
Washington, DC 20004
(202) 637-5600

Counsel for Respondents Anthem Blue Cross and Blue Shield of Connecticut and Anthem Health Plans, Inc.

(additional counsel for respondents on subsequent page)

JOHN G. HARKINS, JR.
ELEANOR MORRIS ILLOWAY
HARKINS CUNNINGHAM LLP
2800 One Commerce Sq.
Philadelphia, PA 19103
(215) 851-6700

DAVID A. BONO
HARKINS CUNNINGHAM LLP
801 Pennsylvania Ave, N.W.
Suite 600
Washington, DC 20004
(202) 973-7600

Counsel for Respondent CIGNA HealthCare of Connecticut, Inc.

R. RYAN STOLL
SKADDEN ARPS SLATE MEAGHER & FLOM, LLP
333 West Wacker Drive
Chicago, IL 60606
(312) 407-0700

WILLIAM A. HELVESTINE
MICHAEL T. HORAN
EPSTEIN BECKER & GREEN, PC
One California Street
26th Floor
San Francisco, CA 94111
(415) 398-3500

DALY D. E. TEMCHINE
EPSTEIN BECKER & GREEN, PC
1227 25th Street, N.W.
Washington, D.C. 20037
(202) 861-0900

Counsel for Respondents Health Net, Inc., and Health Net of Connecticut, Inc.

JONATHAN P. RICH
ATHENA R. TSAKANIKAS
OXFORD HEALTH PLANS, INC.
48 Monroe Turnpike
Trumbull, CT 06611
(203) 459-6488

ROBERT J. GIUFFRA, JR.
SUHANA S. HAN
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004
(212) 558-4000

Counsel for Respondents Oxford Health Plans of Connecticut, Inc. and Oxford Health Plans, Inc.